

Exhibit B

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

REMOTE VIDEO DEPOSITION OF DAVID ROMÁN, VOLUME 1

Via Zoom

Beverly Hills, California

Thursday, May 27, 2021

Reported by:

Pamela Zitny

CSR No. 4461

JOB No. 4581571

1 expert who intends to offer opinions at trial, correct?

2 A Yes.

3 Q How would you describe your area of expertise to
4 the extent it is germane and relevant to the opinions you
5 intend to offer at trial? 11:20

6 A I have a Ph.D. in comparative literature which is
7 the study of literatures, regardless of national boundary
8 or historical period. And we are trained to study and
9 compare literatures from different traditions and both
10 different genres. So it could be works from the medieval 11:21
11 ages to the contemporary. It could be works from the
12 German tradition or the Latin American tradition. It
13 could be poetry, novels, plays, films, what have you.

14 And we are trained to look across disciplines,
15 across literary periods, historical moments. You know, a 11:21
16 quick way to say it is cross-cultural and trans-historical
17 comparative study of literary works.

18 Q And that's what you would consider your core
19 expertise?

20 A Well, that is my training. Yeah, I have a PhD in 11:21
21 that.

22 Q Did you consider yourself as an expert in the
23 Pirate genre?

24 A No. (Crossover talking.)

25 Q I am sorry. 11:21

1 ATTORNEY LOWE: I am going to object belatedly as
2 vague and ambiguous.

3 What does that mean, to be, quote, unquote, an
4 expert in pirate genre?

5 BY ATTORNEY SEGALL:

11:21

6 Q You can answer. Do you consider yourself an
7 expert in the pirate genre?

8 A Well, I think the question is tricky because it
9 assumes that there is such a thing as a pirate genre,
10 right? That there is a long history of literary texts 11:22
11 that serve as the pirate genre. And I am familiar with
12 literature that passes into the pirate themes and stories,
13 what have you, but I don't know that I would necessarily
14 identify the pirate stores having a genre of itself. That
15 seems like a relatively recent phenomena. 11:22

16 Q Okay. So, setting aside the question of sort of
17 the definition of what a genre is, do you consider
18 yourself an expert in pirate literature?

19 A I consider myself having familiarity with pirate
20 literature. 11:22

21 Q Would you consider yourself an expert in pirate
22 literature?

23 A I wouldn't say that -- I don't know who would be
24 able to say that they consider themselves an expert in
25 pirate literature unless they wrote books on that 11:22

1 this semester actually was ending classes early. So we
2 had to end classes before Thanksgiving so that students
3 wouldn't be coming back from Thanksgiving break back to
4 campus, and this has been a different COVID moment.

5 So I knew that I was only able to agree to serve 11:25
6 on this dependent on my work schedule with USC. So, I
7 needed time to go through my own professional obligations
8 at work, USC.

9 And then I wanted to have enough time to be able
10 to consider this case as best I could. So I think we 11:26
11 started probably in early October, I would say.

12 But, again, I don't have -- I don't have a full
13 sense of the timeline. But I would say early October.

14 Q Okay. So around that time in early October.

15 What was your understanding of specifically what you were 11:26
16 being asked to do, what your assignment was as an expert
17 witness?

18 A I am very good about clarifications, You know,
19 and it is something I actually ask my students to think
20 clearly about. Like, what is the assignment so that it is 11:26
21 clear that everyone knows what is expected of them. And
22 the way that I understood my assignment is that I had to
23 read a screenplay and then screen a film. And discuss the
24 potential similarities, if any, between them.

25 Q And did you receive any specific instructions 11:27

1 about what standards you should apply in comparing the
2 works for similarities?

3 A No. Not really. I mean, this is partly that I
4 had my own set of criteria that I was using. Which I
5 explained to the lawyers earlier on, that this is how I
6 think, this is the kind of the work that I do, this is
7 what a comparatist does.

8 Q So you go on to write here in Exhibit 1 that
9 Ms. Hilvert provided you with the plaintiffs' original
10 screenplay, correct?

11 A Correct.

12 Q Then you were asked to compare that to the Disney
13 film, Pirates of the Caribbean: Curse of the Black Pearl;
14 is that right?

15 A Yes.

16 Q And you screened that on Netflix at the time,
17 correct?

18 A Correct.

19 Q Were you asked to review any other films in the
20 Pirates of the Caribbean franchise?

21 A No.

22 Q Were you given any other documents at this
23 initial stage after you received this assignment to
24 compare --

25 A No. No. I simply had the screenplay and then I 11:28

1 note of that.

2 So when I was speaking to the lawyer, I said,
3 like, well, I think the tone is really interesting here.
4 I think, the one phrase that was new that I think that I
5 was hearing the lawyers use was "sequence of events," 11:32
6 which I don't think would necessarily be my language. But
7 I immediately knew what they were talking about.

8 Q So just going back to what you just testified,
9 after your initial sort of review of the works in this
10 case, your -- it is your testimony that your initial 11:32
11 impressions were essentially the same as the ones you
12 ultimately expressed in your report; is that right?

13 A Yeah. I think I had time to develop my major
14 ideas as I was writing the report and think through other
15 comparisons that I thought were relevant and necessary to 11:32
16 include.

17 Q Did you think -- I know you said you felt there
18 were similarities between the works when you first
19 screened them or when you first reviewed them. Did you
20 also feel that there were any significant differences 11:33
21 between the works at that time?

22 A Yeah, no, of course. There are obvious
23 differences between the two works that -- that are
24 immediately apparent. I think like anyone -- any one of
25 us could look at these two and say oh, well, this happens 11:33

1 Q Maybe I would ask the court reporter to read that
2 question back, please, if you would please, Pam?

3 THE REPORTER: Sure.

4 (Record read:

5 "Q So, it is fair to say that the 11:47
6 brief that you were given by
7 plaintiffs' counsel was to sort of give
8 you a framework for your own expert
9 report; is that right?")

10 ATTORNEY LOWE: I will reassert the objection, 11:48
11 vague and ambiguous.

12 THE WITNESS: I will say this and again, this is
13 with complete respect to all parties involved. I had no
14 idea what they wanted me to do with this report, right? I
15 didn't question their intent. But I did feel that my kind 11:48
16 of -- my take on the comparison had a lot more elements
17 that weren't in that initial exhibition.

18 That I personally felt that the things that I was
19 introducing in my report were stronger and more
20 interesting and more detailed. And some of the things 11:48
21 that are in the exhibition, I think, I totally agree with.

22 But I didn't think the major comparison was,
23 like, between, you know, someone wears an outfit in one
24 piece and they replicate that outfit in other.

25 BY ATTORNEY SEGALL: 11:49

1 ATTORNEY LOWE: Okay. I will let him answer.

2 But belated objection on that is that, you know, what
3 happens at trials calls for attorney work product. And
4 so, you know, to the extent that may be basing his answer
5 on attorney work product, we instruct him not to answer. 11:56

6 But he already answered said yes, of course, so there you
7 go.

8 BY ATTORNEY SEGALL:

9 Q Did you understand at the time you were given
10 this brief that Disney also filed a brief with the Ninth 11:56
11 Circuit?

12 A No.

13 Q Were you given a copy of any briefs that Disney
14 filed with the Ninth Circuit?

15 A I looked over all my materials yesterday and 11:56
16 Aleks and I actually looked over all the materials that I
17 was given and I don't think that was part of it. I have a
18 list somewhere if you want me to double check.

19 Q But you don't recall reading a brief that was
20 drafted by Disney, correct? 11:57

21 A No. Was I supposed to?

22 Q Well, you tell me. Would you have thought that
23 was important for completeness to review any brief that
24 Disney filed with the Ninth Circuit as well?

25 A Jordan, I am just going to say what I said 11:57

earlier. You know, I think that, from my understanding, my job was to read a screenplay and screen a film. And see what the overlap, if any, there was between them.

4 So, I kind of stayed clean to that mission,
5 right? And that's been my guiding principal throughout. 11:57
6 What's in the screenplay, what's in the film, what, if
7 any -- what if any correspondence are there between them.
8 And if so, how might I articulate them. And how resonate
9 are they.

10 So I kept it pretty -- I would use the word 11:58
11 clean, kept it pretty clean. So I just thought I'm
12 looking at the screenplay, I am screening the film. I was
13 tasked to do a comparative analysis of the two.

14 Q Other than the plaintiffs' Ninth Circuit brief
15 that you describe on pages 3 and 4 of Exhibit 1, what 11:58
16 other secondary materials were you given at this time as
17 you were beginning to prepare your expert report?

18 A I wasn't given anything other than what's here.

19 Q Okay. And at the time you were given this
20 material, did counsel identify any other sort of facts or 11:58
21 data that you were asked to consider in forming your
22 initial opinion?

23 A I was sent the artwork. There was some sort
24 artwork, some, like, minor artwork. There were some
25 images. And then asked to think about them. And there 11:59

1 was some discussion of a ride.

2 But, again, I wasn't familiar -- I am not fully
3 familiar with the Disney Pirates franchise or all of that.

4 Q When did you receive the art that you just
5 described?

11:59

6 A Well, there was art in the initial screenplay
7 itself. So the screenwriters had some images that were
8 attached to their screenplay that introduced the entire
9 story. There are a little, you know, through the Xerox,
10 they are a little fuzzy.

11 And then your expert report includes some images.
12 There's just been a set of images that have been sort
13 of -- to be slightly silly, like haunting the production
14 of this case. They do surface every once in a while.
15 There is like a -- there's some sort of pirate face that
16 shows up that I am supposed to be aware of or something.

17 So when the Disney report expert had those images
18 there, I wasn't quite sure what the relevance of that was.
19 I certainly didn't introduce any images in my report.

20 I think, so, that was -- that might have been it. 12:00
21 I have a list I could look over if you don't mind.

22 Q Yeah, absolutely. You can look over your list.
23 But I guess I am trying to understand the specific
24 materials that you considered in drafting your original
25 report.

Page 46

1 So we know you considered the screenplay. We
2 know you considered the Curse of the Black Pearl film. We
3 know you considered the plaintiffs' appellate brief that
4 we have been discussing.

5 A That would be it for the initial report. 12:00

6 Q Okay.

7 A I had a little more legwork for the rebuttal.

8 Q So, any other materials you received or
9 considered, that would have happened after you formed your
10 opinions and stated them in the initial report; is that 12:01
11 right?

12 A Yes.

13 Q And at the time you were preparing your initial
14 report after you sort of delivered your preliminary
15 opinions to counsel, did counsel provide you with any 12:01
16 information about the legal standards that should govern
17 your expert opinions in this case?

18 A Can you just walk me through "legal standards."

19 Q Well, did they tell you anything, for instance,
20 about what standards governed the comparison of works for 12:01
21 substantial similarity in copyright cases?

22 A Yeah. There was just a couple of notes that,
23 verbal, that I wasn't sure if I was supposed to write out
24 all the things that I didn't find to be corresponding. So
25 the dissimilarities. And I was informed that the 12:01

1 copyright laws aren't necessarily interested in what
2 doesn't correspond but what does correspond.

3 So I didn't know if I was supposed to write up
4 all the things that, well, this happens here, but it
5 didn't happen here. And I was told no, no, that's not
6 relevant. You were only asked to look -- that the
7 legal -- that the legal requirement for copyright
8 infringement is what actually corresponds between two
9 texts.

10 Q So other than being instructed to disregard
11 dissimilarities between the works, were you given any
12 other information about the legal standards governing
13 copyright cases?

14 A No. I mean, I think that there was some kind of
15 casual conversations about copyright infringement cases.
16 You know, as an intellectual, I am just sort of curious,
17 you know, what do these things look like, or what is
18 important here.

19 And Steven just walked me through generically,
20 you know, what copyright infringement cases tend to focus
21 or what their issues are.

22 Q Did you take notes? You said those were sort of
23 verbal conversations. Did you take notes on those
24 conversations?

25 A No. You know what it felt like? It felt like,

1 you know, conversations in the hall USC between two
2 experts on a particular -- say I bump into, you know, the
3 18th century scholar. And she starts telling me about her
4 latest book and I'm like, oh, okay. Well, like, walk me
5 through this a little bit. I am interested in this a 12:03
6 little bit.

7 But it didn't seem relevant to what I was tasked
8 to do. I mean -- and again, I always go back to what was
9 my particular job here. And I actually, you know, said
10 very clearly that I had no -- I wasn't a lawyer. I don't 12:03
11 have -- that's not my interest or area of specialization.

12 ATTORNEY LOWE: Jordan, since we have been going
13 about an hour, I usually like to take a break every hour,
14 stretch our legs.

15 ATTORNEY SEGALL: Yeah, I have got two or three 12:04
16 more questions in this line and then went we will take a
17 break. It's a good place. But let me just finish up
18 these last couple.

19 BY ATTORNEY SEGALL:

20 Q I just want to go back to what you just 12:04
21 testified, Professor Román. Is it fair to say that you
22 didn't regard sort of the legal standards that governed
23 copyright cases as relevant to the specific expert
24 opinions that you are expressing in this case?

25 ATTORNEY LOWE: Objection, vague and ambiguous. 12:04

1 guess, superficial similarities, right, that might not
2 merit concern. So, let's just say a character in one text
3 has, I don't know, blue eyes and the other text has blue
4 eyes. But that's basically the only correspondence
5 between them. I don't know if I would say that that's a 12:40
6 substantial similarity. I would just say that that is
7 sort of a maybe casual similarity, a kind of banal
8 similarity.

9 But if there's enough differentiating aspects
10 between those two characters, I wouldn't say that there 12:41
11 would be substantial similarity between those characters.

12 Q And in connection with your assignment in this
13 matter, were you specifically asked by counsel to apply
14 any particular test for substantial similarity to your
15 expert analysis? 12:41

16 A I wasn't guided specifically along those lines.
17 I did mention in my report what I thought were the
18 substantial similarities both in, you know, characters,
19 plots, themes, moods, and how well developed they were,
20 both in the screenplay and then echoed in the film. 12:41

21 So I was already going -- I was already going
22 with what I thought was a considerable substantial
23 similarity. And not just going for the banal, the
24 superficial similarity. Oh, they both have, you know,
25 blue eyes. 12:42

1 Q Have you ever heard something called the
2 extrinsic test for substantial similarity?

3 A The extrinsic or intrinsic?

4 Q Extrinsic test for substantial similarity?

5 A Not that I can recollect.

12:42

6 Q Do you understand that in determining whether
7 works are substantially similar, courts are required to
8 distinguish between protectable and unprotectable elements
9 of the work?

10 A Yes.

12:42

11 Q And what is your understanding of what elements
12 of a fictional work are protectable and what elements are
13 unprotectable?

14 A Let me start with the second one. I think that
15 the phrase scènes à faire is one that's important to your
16 profession.

12:42

17 Q And do you understand scènes à faire to be
18 protectable or unprotectable elements?

19 A Well, I think that the idea of a scènes à faire
20 is that it is so intrinsic to the genre and it is repeated
21 so consistently that it is not protected, because it is
22 like a cliche or something. It is like an expectation.

12:43

23 It is a banality that, like, if one is going to see, like,
24 a horror film, that there is going to be at some point
25 like a monster and a corpse or something along those

12:43

1 A Let me just clarify. By "unprotectable," I mean
2 that they can't be claimed to be infringed upon.

3 Q Right. I understand, thank you.

4 A Oh, good, okay. Yeah.

5 Q Okay. Other than scènes à faire, are you aware 12:44
6 of any other elements that are considered unprotectable in
7 performing substantial similarity analysis?

8 A I don't think so.

9 Q In conducting your analysis of the two works at
10 issue here, did you make any effort whatsoever to 12:45
11 distinguish between protectable and unprotectable elements
12 of the two works?

13 A I wasn't using the grid, the legal grid to write
14 up my report, if that's what you are referring to.

15 Again, I was using my scholarly expertise to do a 12:45
16 comparative study between a screenplay and a film and to
17 see what the similarities were.

18 If I found that there was a substantial
19 similarity, then, of course, I extrapolated on that in my
20 report and made a big deal about it and was able to argue 12:45
21 it through.

22 If I thought that a similarity was banal, I
23 tended not to include it in the report, although some of
24 those are included in the appellate brief, Exhibition B.

25 Q Okay. So you think the appellate brief contains 12:46

1 A Right.

2 Q So I am asking you, is it your opinion as an
3 expert on expressing an opinion about substantial
4 similarities that all of the similarities you have
5 described in your expert report relate to protectable 12:53
6 elements of the work?

7 ATTORNEY LOWE: Same objections, calls for a
8 legal conclusion. Vague and ambiguous.

9 THE WITNESS: Let me answer it this way. You
10 know, when I read the screenplay, I formed an opinion on 12:53
11 the quality of the screenplay, its innovations, what I
12 found interesting, what I found unusual, all of that,
13 which I said several times already today.

14 Then, when I screened the film and I saw some of
15 those echoes, I thought, well, this is interesting. It 12:53
16 does feel like copyright infringement.

17 So, if what I identify as original and particular
18 to the screenplay, I think should be protected by
19 copyright law. But, again, I am not a lawyer and I am
20 just saying that it does seem to me that the qualities in 12:54
21 the screenplay that I have identified as original, even if
22 they can be reduced to scènes à faire from an
23 unimaginative limited perspective, I think that misses the
24 importance of the contribution in the screenplay.

25 BY ATTORNEY SEGALL: 12:54

1 understand those terms: Irony, wit, humor.

2 BY ATTORNEY SEGALL:

3 Q But you didn't go out and review pirate works to
4 determine whether other pirate works incorporated a
5 humorous tone into the story --

13:47

6 A No, no, and I wasn't asked to do that. That
7 wasn't a task at hand. I was asked to use my expertise to
8 kind of do this, again, very clean analogy, comparison,
9 between the screenplay and the film.

10 Q Okay.

13:47

11 A Based on my understanding of like pirate
12 narratives both in like history, literature, popular
13 culture and film, that's what it was -- that's what I was
14 referring to.

15 Q Okay. You mentioned earlier that you were

13:47

16 instructed by counsel about the selection and arrangement
17 test, as I believe you called it, correct?

18 A Yes.

19 Q And I think you described your understanding of
20 the selection and arrangement test previously. But my
21 question is did you offer either in your report or do you
22 plan to offer a specific opinion regarding how generic
23 elements in plaintiffs' screenplay are selected and
24 arranged?

13:47

25 A I think that's all in my report.

13:48

1 A Yes.

2 Q So those are things, in your view, there is a
3 standard pirate story, correct?

4 A Yes. If one were to think, like, well, tell me a
5 pirate story, I think we would all be able to come up with 13:56
6 a more or less standard pirate story.

7 Q And do you consider yourself an expert in pirate
8 stories?

9 A I think we went through this this morning, and I
10 would say I wouldn't name myself as having an expertise in 13:56
11 pirate stories.

12 Q Okay. As a university professor, have you ever
13 written any academic work on pirates or pirates
14 literature?

15 A No. 13:57

16 Q Have you ever given speeches or presentations
17 about pirates or pirate literature?

18 A Only in The Early Modern Period when I was in
19 graduate school.

20 Q And did those speeches involve work from the 17th 13:57
21 century and prior?

22 A Yes, that's more from The Early Modern Period
23 and, like, Colonial Era and Imperialism. They were more
24 based on historical figures.

25 Q Have you ever taught any courses that have 13:57

1 And it seemed that the Disney expert was basing
2 his authority on that familiarity. So I then asked, when
3 I had to write up my rebuttal to that, I said, you know,
4 would it -- should I be rereading or should I be reading
5 or screening, like, everything that they are referencing 14:04
6 in the rebuttal report? Like, can I do a rebuttal report
7 to an expert report if I haven't screened all the films
8 that he is referencing in his report? Like, is that
9 necessary for my rebuttal?

10 And then I was told by -- by the lawyers that, 14:04
11 no, that wasn't -- did someone say something?

12 Q I am sorry. You cut out there a second. Do you
13 mind repeating the last answer you were told by the
14 lawyers? What?

15 A That it wasn't for me to screen or familiarize 14:05
16 myself with every reference that appeared in the Disney
17 expert's report.

18 Q Okay. Well, let's focus on your initial report
19 first. And then we will talk about the rebuttal report.

20 A Okay. 14:05

21 Q For your initial report, I know you said you
22 screened Goonies, correct?

23 A Yeah, at the last minute.

24 Q Did you review any other pirate works before you
25 issued the report in this matter? 14:05

1 A No.

2 Q And then for your rebuttal report, did you -- you
3 reviewed Cutthroat Island, correct?

4 A Yes.

5 Q Did you review any other pirate works in 14:05
6 connection with preparing your rebuttal report in this
7 matter?

8 A Well, I was asking the lawyers, I mean, Steven
9 and Aleks, if I was going to be responsible for all the
10 literature that was cited in the Disney expert report. I 14:06
11 asked my assistant -- I have a first-year student at USC
12 who I am mentoring and is a work-study student. I asked
13 him, his name is Brandon, I said Brandon, do me a quick
14 favor. Do a quick Google search on pirate literature and
15 see what you come up with. 14:06

16 Partly because I was curious and partly because I
17 hadn't given him anything to do and he is relying on some
18 hours -- talk about billable hours. I mean, he is an
19 undergrad hoping to get a little bit of money and I don't
20 give him enough work. So he appreciates that kind of 14:06
21 thing.

22 So he then came up with a list of, maybe, I don't
23 know, 12 or 15 things. And on that list was a book that I
24 thought, oh, this might be actually helpful to kind of
25 gloss over. And it is this book. 14:06

1 the pirate story surfaces, right? But I wouldn't
2 necessarily say that it is an established genre like some
3 other genres that are more prevalent.

4 BY ATTORNEY SEGALL:

5 Q Do you agree with the complaint when it says 14:13
6 "Films have covered swashbuckling pirates"? Do you think
7 that's a true statement?

8 A Well, it is a very vague statement but I guess
9 just on the level of films have covered swashbuckling
10 pirates, I would say, yes, there have been swashbuckling 14:13
11 pirates that appeared in films.

12 Q Have you seen any of these films in paragraph 10?

13 A Just, again, the popular ones and not the more
14 obscure ones. So, no. Maybe like two or three of them.
15 But, again, that is when I was like a kid or in high 14:13
16 school. It just -- my recollection of, like, the plots of
17 these aren't -- you know, isn't all that strong.

18 Q For instance, do you think the Treasure Island
19 film from the 1950s is a significant pirate film?

20 ATTORNEY LOWE: Objection, vague. 14:14

21 THE WITNESS: I would answer this way: That I
22 think that if people were to make a list of pirate films,
23 like named five or six or eight pirate films, that more
24 likely Treasure Island would appear on, like, most
25 people's lists. 14:14

1 A If you keep it between us, yes. And that would
2 be I am not like the most fluent in, like, science
3 fiction. I find it so overwhelming. Right? There are
4 just so many different types of -- that genre just seems
5 full of multiple type of stories that is hard to really 14:39
6 get a grip on it.

7 Q What was the last pirate novel you read?

8 A Novel with a pirate?

9 Q Sure.

10 A Well, there is a beautiful book that was just 14:39
11 published last year called Hamnet. Did you read it?

12 Q Yeah.

13 A It is good, isn't it?

14 Q I agree.

15 A Yeah. And I am trying to -- I read so much. I 14:39
16 mean, it not that I seek out pirate, like, literature per
17 se. I am kind of like -- this is totally off the record,
18 I guess, but just -- good for you, Jordan, that you read
19 that book. I mean, you sound like a super busy person. I
20 mean, all lawyers. To be able to read Hamnet, that's 14:40
21 pretty cool.

22 Q Thank you. I appreciate that.

23 Okay. Well, why don't we move on. Let's go back
24 to Exhibit 5. And page 3 requests -- the information
25 under Request for Production of Documents, No. 2, do you 14:40

1 A I am saying that in the case of the Pirates of
2 the Caribbean there was such a significant amount of
3 overlap between the original creative and innovative
4 elements in the screenplay with the film, just independent
5 of the sequence of events and the way that they were 15:17
6 selected and arranged that merited for me the case.

7 And the things that I found that were either
8 missing in the screenplay that appeared in the film or
9 missing in the film that appeared in the screenplay,
10 however, didn't seem significant enough to -- I mean, I 15:18
11 could have written it in a report. But I was instructed
12 not to mention the dissimilarities.

13 Q So you testified that in the process of comparing
14 the two works, you didn't consider, in generating your
15 report, you didn't consider the possibility -- or you 15:18
16 didn't, in fact, review other pirate works; is that
17 correct, other than the Goonies?

18 ATTORNEY LOWE: Objection. Are you saying like
19 from the time that he was retained until he generated his
20 report? Or are you saying over the last 20 years? Or 15:18
21 what's the time frame? Vague.

22 BY ATTORNEY SEGALL:

23 Q Sorry. From the time you were retained to the
24 time you generated your report, you didn't review other
25 pirate works to determine whether individual elements in 15:19

1 the works you were comparing were original to the
2 screenplay, right? That's what you testified to earlier?

3 A Right. Because my task was very clear which is
4 they wanted me to look at the screenplay and look at the
5 film and base my analysis on that. 15:19

6 Q And did you ever say, you know, I am not going to
7 be able to make an informed judgment about the similarity
8 between these works without some context? I need to
9 consider some other works in the genre? Did you ever
10 suggest that? 15:19

11 A No. And nor did they suggest to me that I should
12 have that experience.

13 Q Did they -- (crossover talking.)

14 A I was never interviewed and said, okay, we need
15 to know your entire history with the pirate genre. 15:19

16 Q At the time you were preparing your original
17 report, you understood that both works were inspired in
18 part by the Pirates of the Caribbean theme park ride,
19 didn't you?

20 A That always was slightly vague. 15:20

21 Q You didn't know one way or the other?

22 A I didn't know that there was a theme park.

23 Q You weren't aware that there was a theme park
24 ride, you mean, called Pirates of the Caribbean?

25 A Exactly. 15:20

1 ATTORNEY LOWE: Objection, incomplete
2 hypothetical.

3 THE WITNESS: I am pretty well versed in West
4 Side Story. I haven't seen the Baz Luhrmann film in a
5 while. 15:24

6 BY ATTORNEY SEGALL:

7 Q It's a straight adaptation, more or less.

8 A Yeah, I just remember that John Leguizamo was in
9 it (Reporter asks for repeat.) The casting. I just
10 remember the casting. 15:24

11 Q John Leguizamo was in it.

12 A I just remember that it had a diverse cast.

13 I am sorry, Jordan. I am not exactly sure what
14 we are talking about. So maybe if we could just revisit
15 that. 15:25

16 Do I think that it is important to know the
17 source material when comparing two works that share a same
18 source material?

19 Q Correct, yeah.

20 A I would say, yeah, it absolutely helps to know 15:25
21 the source material. But that would be a literary
22 historian in me to think, yes, it is definitely
23 interesting. And it can be relevant.

24 The Shakespeare analogy is slightly atypical
25 because that Romeo and Juliet story is so well known, 15:25

1 literature, whether they be stories or cartoons or even in
2 like adolescent story lines suggest as much. That the
3 pirate is not simply, you know, what he -- and it was a
4 he. What he was in The Early Modern Period, which is just
5 like this really scary figure that could really hurt you. 15:52

6 Q But so it is your opinion as you sit here today
7 that works like the Pirates of Penzance that in the past
8 incorporated humor into pirate stories are distinct
9 somehow because they use less multifaceted comedic
10 elements? 15:52

11 A That's nicely phrased.

12 Q And what's the basis for that opinion since you
13 didn't review the Pirates of Penzance in connection with
14 your assignment?

15 A Just my familiarity with that. I didn't review 15:52
16 any of the lists of works that were included in the Disney
17 expert report.

18 Q And you weren't personally familiar with all of
19 the works in Mr. McDonald's report, were you?

20 A No. No. I don't even know if he was, right? I 15:53
21 mean, I think that some of the stuff could be pulled from
22 like the kind of encyclopedias that I was looking at.
23 That's one of the reasons I pulled that out, to see are
24 these sort of synopses helpful to the Disney report.

25 And I did ask Aleks and Steven if it was 15:53

1 important for me to review those materials. Like, do I
2 need to read up on all of that? And their answer was
3 absolutely not.

4 Q So, why don't you take a look at Exhibit 8 which
5 I have just marked, which is Mr. McDonald's expert report. 15:53

6 A All right, hang on. Here we go.

7 (Deposition Exhibit 8, McDonald Report,
8 was marked for identification by the
9 court reporter.)

10 BY ATTORNEY SEGALL:

15:53

11 Q First of all, you recognize this document,
12 correct?

13 A Yeah.

14 Q This is the expert report that you reviewed in
15 submitting your rebuttal report? 15:54

16 A Yes.

17 Q And can you turn to page 23 with me, please.

18 A All right. Dialogue 23, "Novelty Analysis"?

19 Q Yes, underneath that. I am going to point you to
20 the last sentence on this page. 15:54

21 And says "Comedy in pirate stories dates back to
22 Gilbert O'Sullivan's 1879 operetta, Pirates of Penzance
23 which satirized pirate melodramas of the period."

24 And you agree with that, correct?

25 A Well, I mean, it might even date back further. I 15:54

1 characters in the screenplay, but they still do have that
2 kind of ominous, threatening component.

3 Like we do see the pirate in the -- Captain Jack
4 Nefarious in the screenplay and even Davy Jones, for that
5 matter, like kill people, right? So it is not as if, 16:03
6 like, they are completely muted of any kind of physical
7 harm. Like, they do do physical harm to other people and
8 to themselves. They cut each other when they are sword
9 fighting.

10 But yet, at the same time, they have this other 16:03
11 likability factor. I think the screenplay when they first
12 introduced Captain Jack Nefarious, they even say, look, he
13 is a highly charismatic pirate who, in that kind of
14 evil -- and evil too.

15 Q So, it is that combination you are talking about 16:04
16 of evil and charisma?

17 A Yeah. That's what I would say is the kind of
18 hybrid quality that's introduced in the screenplay that we
19 then see echoed in the Hector Barbossa.

20 Q And it is your opinion that that quality is an 16:04
21 innovation of the screenplay, correct?

22 A Yes, sir.

23 Q Are you familiar with Long John Silver from
24 Treasure Island?

25 A I wasn't asked to screen that. 16:04

1 of the pirate story to encourage such a prologue. In
2 fact, it is highly atypical in my opinion."

3 And I just want to better understand your opinion
4 about the prologue. Are you saying that there is no
5 precedence for the use of a prologue in general in pirate 16:45
6 stories, or are you saying there is something specific
7 about the prologue that lacks any precedence in pirate
8 stories?

9 A I would even just go that prologues are an
10 incredibly unusual literary device at large. Like, there 16:46
11 are not, like, a lot of literary texts that start off with
12 a prologue. I mean, an epilogue is much more -- if there
13 is a standard, there's more of a sense of an epilogue than
14 a prologue.

15 So the idea of a prologue attached to any genre 16:46
16 is already going to be noteworthy and somewhat unusual.
17 And I think that that's where I was going; that both works
18 have this highly unusual introductory narrative frame
19 which is the prologue, and then I went through and tried
20 to identify how they functioned in each. 16:46

21 Q It is your testimony sitting here today, is it
22 your opinion as a comparative literature expert, that
23 prologues are an uncommon device in film and literary
24 works? That's your testimony?

25 A Well, I mean, Raiders of the Lost Arc, Star Wars, 16:47

1 I, the undersigned, a Certified Shorthand
2 Reporter of the State of California, do hereby certify:

3 That the foregoing proceedings were taken before
4 me at the time and place herein set forth; that any
5 witnesses in the foregoing proceedings, prior to
6 testifying, were duly sworn; that a record of the
7 proceedings was made by me using machine shorthand which
8 was thereafter transcribed under my direction; that the
9 foregoing transcript is a true record of the testimony
10 given.

11 Further, that if the foregoing pertains to the
12 original transcript of a deposition in a Federal Case,
13 before completion of the proceedings, review of the
14 transcript [X] was [] was not required.

15 I further certify I am neither financially
16 interested in the action nor a relative or employee of any
17 attorney or party to this action.

18 IN WITNESS WHEREOF, I have this date subscribed
19 my name.

20 Dated: June 10, 2021

21
22 
23

24 Pamela Zitny
25

CSR No. 4461

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

-----o0o-----

ARTHUR LEE ALFRED II, et al.,

Plaintiffs,

vs.

No. 2:18-CV-08074-CBM-AS

THE WALT DISNEY COMPANY, et

al.,

Defendants.

10 _____ /

11

12

13

VIDEOTAPED VIDEOCONFERENCE DEPOSITION OF DAVID ROMAN

VOLUME 2

16

17

Taken before MICHELE J. LUCAS

18

CSR No. 4017

19

20

21

22

23

—

Page 225

1 You said something along the lines of you
2 were given something by counsel to consider.

3 What were you talking about there?

4 A. When I talked to Steven -- this was just
5 in the fall after I was hired to actually write the 02:03
6 report, right? through the second phase -- they
7 said that it wasn't important for me to make a list
8 of the dissimilarities.

9 Q. Did they give you anything in writing
10 explaining your assignment or your conveying the 02:03
11 legal standards?

12 A. No, no. I kind of -- a part of me wished
13 that they had, but, no, that wasn't the case.

14 And, again, Steven, you know, again, I
15 respect all of you and what you do. So this is 02:04
16 nothing -- this is not calling anything into
17 question there.

18 But one of the things I was really
19 concerned with was just not violating the protocols
20 of your profession through my naivete. 02:04

21 So I wasn't sure what I was -- you know, I
22 never -- you know, I wasn't sure what I was -- you
23 know, what was permissible to ask or not
24 permissible to ask without jeopardizing, you know,
25 the case. 02:04

1 Q. Okay. At the time you drafted and signed
2 that expert report, were you aware of the ride's
3 existence?

4 A. I would have to review my materials in
5 terms of the timeline of what I was given. 03:25

6 And I don't recall if I was given that
7 information for the expert report or for the Disney
8 rebuttal.

9 But I do know this, Jordan, that I wasn't
10 asked to screen the little clip, the YouTube clip 03:25
11 of the ride, until I read the Disney expert report,
12 and I had to draft my rebuttal.

13 Q. Okay.

14 A. That was important for plaintiffs' counsel
15 for me to become familiar with it. 03:25

16 Q. So at the time you signed and submitted
17 your initial expert report in this matter, you had
18 never seen footage of the Walt Disney ride?

19 A. I can answer that confidently that I
20 didn't see any footage of it. 03:26

21 Q. And you had never ridden the Walt Disney
22 ride?

23 A. No. Is it both at Disneyworld and
24 Disneyland?

25 Q. I think so, yes. 03:26

1 REPORTER'S CERTIFICATE
2

3 I, MICHELE J. LUCAS, a Shorthand Reporter,
4 State of California, do hereby certify:

5 That DAVID ROMAN, in the foregoing deposition
6 named, was present and by me sworn as a witness in the
7 above-entitled action at the time and place therein
8 specified;

9 That said deposition was taken before me at
10 said time and place, and was taken down in shorthand by
11 me, a Certified Shorthand Reporter of the State of
12 California, and was thereafter transcribed into
13 typewriting, and that the foregoing transcript
14 constitutes a full, true and correct report of said
15 deposition and of the proceedings that took place;

16 IN WITNESS WHEREOF, I have hereunder
17 subscribed my hand this 27th day of July, 2021.

18
19 
20

21 MICHELE J. LUCAS, CSR No. 4017
22 State of California
23
24
25